

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

WINFORD DALLAS JONES,)
Plaintiff,)
v.)
C.H. ROBINSON WORLDWIDE, INC.,)
Defendant/Third Party Plaintiff.)
v.)
AKJ ENTERPRISES, INC., d/b/a) Civil Action No. 7:06-CV-00547
 Unlimited Express)
And)
ELSON BOLAR,)
And)
DONNIE BOLAR,)
Third Party Defendants.)

MEMORANDUM IN SUPPORT OF ROBINSON'S MOTION
IN LIMINE TO EXCLUDE EVIDENCE REGARDING PROPOSED
SAFETY RATINGS FOR AKJ ENTERPRISES, INC.

Having now received and reviewed Plaintiff's Reply Brief in Support of his Motion for Partial Summary Judgment, Defendant C.H. Robinson Worldwide, Inc. ("Robinson"), respectfully asks the Court for an Order barring Plaintiff from offering any evidence at trial relating to a proposed "unsatisfactory" safety rating of AKJ Enterprises, Inc. in May 2004.

In May 2004, the FMCSA performed a compliance review of AKJ Enterprises, Inc. The result of that first review, as Plaintiff notes at great length in all three of his summary judgment briefs—was that AKJ was given a “proposed rating of ‘unsatisfactory.’” Pl. Br. in Supp. of Mot. for Part. Sum. J., at 15; Pl. Br. in Opp. to Robinson’s Mot. for Sum. J., at 3-4; Pl. Reply Br. re his Mot. for Part. Sum. J., at 10. Plaintiff also notes that under FMCSA procedure, AKJ was given time to address the FMCSA’s concerns and, in July 2004, AKJ was given a “conditional” safety rating. *Id.* Plaintiff relies heavily on this fact as proof of his negligent hiring and negligent entrustment claims—apparently on the theory that Robinson should have known about the proposed rating, and taken some action because of it.

However, as Plaintiff is aware, *proposed* safety ratings have no regulatory significance—only the *final* safety rating that is awarded by the FMCSA (after the carrier has had the opportunity to address the concerns raised in the proposed rating) has any significance. This was explained very cogently in the un-rebutted testimony of Annette Sandberg, Robinson’s expert, and the person who was *Administrator* of the FMCSA during this time period:

Q Well, that -- correct me if I'm wrong, I know you will. But the issue of whether the rating had changed at some point prior to the accident is really an issue of whether -- strike that. Would it change your opinions at all if you found that the first rating that was proposed for this carrier had been an unsatisfactory rating?

A ***Proposed ratings don't mean anything.***

Q They don't mean anything at all?

A **It's simply a proposed rating. Until it's actually posted, that's when the rating matters.**

Q So that wouldn't change anything for you?

A **No.**

Deposition of Annette Sandberg, March 18, 2008, attached hereto as **Exhibit 1**, at p 96 (emphasis added).

Plaintiff has come forward with no evidence to the contrary, nor any evidence that Robinson even had a way of knowing at the time about the proposed rating of a motor carrier. Moreover, Plaintiff has not established that Robinson has any legal duty to consider proposed ratings that are undisputedly irrelevant (this is no different than seeking to offer evidence that someone was charged with a crime for which they were not convicted). Therefore, any probative value this evidence might have is plainly outweighed by the substantial unfair prejudice, and should be excluded pursuant to Fed. R. Evid. 403.

CONCLUSION

For the foregoing reasons, Robinson asks that this motion be granted.

Respectfully submitted,

C.H. ROBINSON WORLDWIDE, INC.,

By counsel,

/s://Robert Michael Doherty, Esq.

Paul C. Kuhnel (VSB #28151)
Robert Michael Doherty (VSB #43997)
WOOTENHART PLC
707 S. Jefferson Street, Suite 300
P. O. Box 12247
Roanoke, VA 24024-2247
(540)343-2451
(540)345-6417 (facsimile)

Counsel for the Robinson Defendants

CERTIFICATE

I hereby certify that I electronically filed the foregoing with John F. Corcoran, Clerk, U. S. District Court, using the CM/ECF system which will send notification of such filing to the following on this 18th day of **April, 2008**:

Gary C. Hancock, Esq.
Timothy E. Kirtner, Esq.
Gilmer, Sadler, Ingram, Sutherland & Hutton
65 East Main Street
P. O. Box 878
Pulaski, VA 24301

Byron R. Shankman, Esq.
P. O. Box 1859
Dublin, VA 24084

Co-Counsel for the Plaintiff

/s:// Robert Michael Doherty, Esq.

s:\robinson_ch\19765\motion in limine no 3--brief.doc4/18/2008rmd